UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Ex parte MALCOLM GARY LaFEVER and TED NATHAN MYERSON

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Appeal 2016-005131
Application 13/764,773[1]
Technology Center 3600

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Before LARRY J. HUME, JAMES W. DEJMEK, and
MATTHEW J. McNEILL, *Administrative Patent Judges*.

DEJMEK, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of
claims 1–20. We have jurisdiction over the pending claims under 35 U.S.C.
§ 6(b).

We affirm.

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[1] Appellants identify Anonos Inc. as the real party in interest. Br. 3.

STATEMENT OF THE CASE
Introduction

Appellants' disclosed and claimed invention is directed to managing

user data. Abstract, *see also* Spec. 1:13–16. In a disclosed embodiment,

user data may be collected from a variety of unaffiliated data sources (e.g.,

social networks, e-commerce accounts, and loyalty programs). Spec. 1:18–

2:17, 5:19–20. The gathered data may be aggregated to allow the user to

control disclosure of the information to other third party recipients.

Spec. 6:13–19. The Specification refers to such a system as a private data

concierge (PDC). Spec. 5:12–14. Further, in a disclosed embodiment, a

unique proxy identifier may be associated with the user as a mechanism to

provide user anonymity. Spec. 40:16–41:13.

Claim 1 is representative of the subject matter on appeal and is

reproduced below with the disputed limitations emphasized in *italics*:

> 1. A computer-implemented-method for collecting data related to a user and providing the user with control over said data, comprising:
>
> providing, by a computing device, for a user to select one or more unaffiliated data sources to be accessed to collect said data, and recording selections of unaffiliated data sources made by the user;
>
> *assigning* to each selected data source, by the computing device, *a dynamically changing, unique identifier associated with the user and the user's use of the selected one or more unaffiliated data sources*;
>
> collecting, on the computing device, said data from the unaffiliated data sources selected by the user and said associated dynamically changing, unique identifiers;
>
> aggregating, on the computing device, said data collected from the unaffiliated data sources by the collecting operation and said associated dynamically changing, unique identifiers;
>
> generating, on the computing device, an aggregated data profile associated with said user based on said data, wherein said aggregated

data profile comprises a plurality of characteristics of said user and said associated dynamically changing, unique identifiers;

providing, by the computing device, the user with one or more controls to revise one or more characteristics contained in the user's aggregated data profile, thereby forming user-revised characteristics;

providing, by the computing device, the user with one or more controls for the user to authorize release of said user-revised characteristics as contained in the user's aggregated data profile to one or more third parties without disclosing an identity of the user by disclosing the dynamically changing unique identifiers associated with the user,

wherein the one or more controls for the user to authorize release of said user-revised characteristics include *controls for setting one or more of a plurality of levels of disclosure of the dynamically changing unique identifiers associated with the user with the release for each of the one or more third parties,*

wherein the level of disclosure is variable and the controls are configured to allow the user to modify the level of disclosure for one or more of the third parties at any time, and

wherein the dynamically changing unique identifiers associated with the user for each of the one or more unaffiliated data sources change over time;

releasing, by the computing device, said user-revised characteristics to one or more third parties only when authorized by the user and only releasing the user-revised characteristics corresponding to the set level of disclosure to each of the one or more third parties;

tracking, by the computing device, *past and current dynamically changing unique identifiers* and mapping said identifiers to the user; and

facilitating transactions, with the computing device, between the user and one or more third parties using the tracked past and current unique identifiers mapped to the user.

The Examiner's Rejections

1.   Claims 1–20 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Final Act. 11.

2.   Claims 1, 3, 6–11, and 13–20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moonka et al. (US 2012/0054680 A1; Mar. 1, 2012) ("Moonka"); King (US 8,364,969 B2; Jan. 29, 2013); and Amaudruz et al. (US 2011/0311049 A1; Dec. 22, 2011) ("Amaudruz"). Final Act. 12–21.

3.   Claims 2, 4, 5, and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Moonka, King, Amaudruz, and Leach (US 2012/0323656 A1; Dec. 20, 2012). Final Act. 22–24.

ANALYSIS[2]

Rejection under 35 U.S.C. § 101

Appellants dispute the Examiner's conclusion that the pending claims are directed to patent-ineligible subject matter under 35 U.S.C. § 101. Br. 10–24. In particular, Appellants assert the claims "cause data that represents a physical object or substance to undergo a physical transformation." Br. 12–13. Specifically, Appellants contend "the claimed invention affirmatively and dynamically obscures data using the aforementioned DDIDs [(Dynamic De-Identifiers, a term introduced in the

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[2] Throughout this Decision, we have considered the Appeal Brief, filed September 2, 2015 ("Br."); the Examiner's Answer, mailed February 10, 2016 ("Ans."); and the Final Office Action, mailed March 3, 2015 ("Final Act."), from which this Appeal is taken. We note Appellants did not file a Reply Brief in response to the factual findings and legal conclusions in the Examiner's Answer.

Appeal Brief to indicate dynamically changing proxy identifiers, *see* Br. 13)] in order to <u>transform</u> data that may previously have been identifiable to third parties into data that is unidentifiable to third parties." Br. 16–17. Further, Appellants assert the claims recite additional elements of data transformation, including the deletion; addition; substitution or replacement; serialization; scrubbing, anonymizing, obscuring, and obfuscating; and separating, disjoining, splitting, segregating, disassociating, or disaggregating of data or data attributes. Br. 13–15. Additionally, Appellants argue the claims specify how the computer hardware and database are specially programmed. Br. 17–18.

For the reasons discussed below, Appellants have not persuaded us of error. The Supreme Court's two-step framework guides our analysis. *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2355 (2014). If a claim falls within one of the statutory categories of patent eligibility (i.e., a process, machine, manufacture or composition of matter) then the first inquiry is whether the claim is directed to one of the judicially recognized exceptions (i.e., a law of nature, a natural phenomenon, or an abstract idea). *Alice*, 134 S. Ct. at 2355. If so, the second step is to determine whether any element, or combination of elements, amounts to significantly more than the judicial exception. *Alice*, 134 S. Ct. at 2355.

Although the independent claims each broadly fall within the statutory categories of patentability, the Examiner determines the claims are directed to a judicially recognized exception—i.e., an abstract idea. Final Act. 11. In particular, the Examiner finds the claims are directed to the abstract idea of organizing human activities—specifically, "organizing how users control their data release." Final Act. 11.

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Instead of using a definition of an abstract idea, "the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided." *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (citing *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1353–54 (Fed. Cir. 2016)); *accord* United States Patent and Trademark Office, *July 2015 Update: Subject Matter Eligibility* 3 (July 30, 2015), https://www.uspto.gov/sites/default/files/ documents/ieg-july-2015-update.pdf (instructing Examiners that "a claimed concept is not identified as an abstract idea unless it is similar to at least one concept that the courts have identified as an abstract idea."). As part of this inquiry, we must "look at the 'focus of the claimed advance over the prior art' to determine if the claim's 'character as a whole' is directed to excluded subject matter." *Affinity Labs. of Tex., LLC v. DirecTV, LLC*, 838 F.3d 1253, 1257 (Fed. Cir. 2016).

Here, Appellants' claims generally relate to collecting data associated with a user and providing the user control over the collected data. *See, e.g.*, claim 1. Additionally, the claims recite "assigning . . . a dynamically changing, unique identifier associated with the user." Thus, when the user releases selected user data to a third party, the data may be released along with the dynamically changing, unique identifier; thereby providing a level of anonymity for the user. As part of controlling the user data to be released, the claims also allow for the user to "revise one or more characteristics" of the user data and set a level of disclosure.

Our reviewing court has concluded that abstract ideas include the concepts of collecting data, recognizing certain data within the collected data

set, and storing the data in memory. *Content Extraction & Transmission LLC v. Wells Fargo Bank, N.A.*, 776 F.3d 1343, 1347 (Fed. Cir. 2014). Additionally, the collection of information and analysis of information (e.g., recognizing certain data within the dataset) are also abstract ideas. *Elec. Power*, 830 F.3d at 1353. Similarly, "collecting, displaying, and manipulating data" is an abstract idea. *Intellectual Ventures I LLC v. Capital One Fin. Corp.*, 850 F.3d 1332, 1340 (Fed. Cir. 2017). Also, the gathering and combining of data that does not require input from a physical device is an abstract idea. *Digitech Image Techs., LLC v. Elec. for Imaging, Inc.*, 758 F.3d 1344, 1351 (Fed. Cir. 2014). Recently, our reviewing court has also concluded that "creating an index and using that index to search for and retrieve data" is an abstract idea. *Intellectual Ventures I LLC v. Erie Indem. Co.*, 850 F.3d 1315, 1327 (Fed. Cir. 2017).

Further, merely combining several abstract ideas does not render the combination any less abstract. *RecogniCorp, LLC v. Nintendo Co.*, 855 F.3d 1322, 1327 (Fed. Cir. 2017) ("Adding one abstract idea . . . to another abstract idea . . . does not render the claim non-abstract."); *see also FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1093–94 (Fed. Cir. 2016) (determining the pending claims were directed to a combination of abstract ideas).

Here, the collection, aggregation, organization, and dissemination of user data is similar to ideas previously concluded by our reviewing court to be abstract. *See e.g., Content Extraction*, 776 F.3d at 1347, *Elec. Power*, 830 F.3d at 1353, *Digitech*, 758 F.3d at 1351. Additionally, assigning an identifier associated with a user is similar to the use of an index in a database. *See Erie Indem.*, 850 F.3d at 1327. Further, in *Dealertrack, Inc. v.*

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Huber, 674 F.3d 1315 (Fed. Cir. 2012), the court determined the claim at issue included three steps of receiving data, selectively forwarding data, and forwarding reply data. *Dealertrack*, 674 F.3d at 1333. As the Examiner explains, "[i]n *Dealertrack,* the claimed system receives and selectively forwards credit application data that represents physical objects, but the court held that this basic concept of processing information through a clearinghouse was an abstract idea." Ans. 19.

Because we determine the claims are directed to an abstract idea, we analyze the claims under step two to determine if there are additional limitations that individually, or as an ordered combination, ensure the claims amount to "significantly more" than the abstract idea. *Alice*, 134 S. Ct. at 2357. The implementation of the abstract idea involved must be "more than [the] performance of 'well-understood, routine, [and] conventional activities previously known to the industry.'" *Content Extraction*, 776 F.3d at 1347–48 (alteration in original) (quoting *Alice*, 134 S. Ct. at 2359).

Appellants argue the claims recite significantly more to support eligibility of the patent application. Br. 19–24. In particular, Appellants assert the claims: (i) effect a transformation of a particular article to a different state; (ii) include a limitation that is not well-understood or conventional; or (iii) recite other meaningful limitations beyond linking the use to a particular technological environment. Br. 19.

Contrary to Appellants' assertions, the claims do not cause data to undergo a physical transformation such that the data becomes anonymous (*see* Br. 13), rather the claims assign an identifier (i.e., a dynamically changing unique identifier) that is *associated with* the user and the user's use of the data source. *See* Ans. 19. Also, many of the examples of

"transformation" identified by Appellants are not recited in the claims or are otherwise subsumed by the limitation of "revis[ing] one or more characteristics contained in the user's aggregated data profile." *See* Br. 13–15, claim 1; *see also In re Self*, 671 F.2d 1344, 1348 (CCPA 1982) (limitations not appearing in the claims cannot be relied upon for patentability).

Further, we disagree with Appellants that the claims add a specific limitation that was not well-understood, routine, or conventional. As set forth in the Specification, the private data concierge (PDC) engine may be run on a computing device. Spec. 26:20–27:1. The recited steps such as collecting data from data sources, aggregating data together, assigning an identifier (i.e., index) to the data, providing for inputs from a user to manipulate the data, and sending data are generic computer functions that are well-understood, routine, and conventional activities previously known to the industry. "[T]he use of generic computer elements like a microprocessor or user interface do not alone transform an otherwise abstract idea into patent-eligible subject matter." *FairWarning IP*, 839 F.3d at 1096 (citing *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1256 (Fed. Cir. 2014)). Also, as the Examiner explains, Appellants' reliance on extrinsic evidence (i.e., a speech given by the FTC Commissioner, *see* Br. 20–21) "merely shows industry's interest to provide consumer control over their data. It does not demonstrate how the claimed computing elements must operate in an unconventional manner to execute the claimed process." Ans. 21.

Additionally, we agree with the Examiner that the use of a dynamically changing unique identifier does not add a meaningful limitation

beyond generally linking the use of the abstract idea to a particular technological environment. Ans. 22. Appellants do not provide persuasive evidence or argument to support their position. *See* Br. 22–24.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 101. Additionally, for similar reasons, we sustain the Examiner's rejection under 35 U.S.C. § 101 of claims 2–20, which were not argued separately with particularity. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Rejections under 35 U.S.C. § 103(a)

In rejecting claim 1, the Examiner relies on the combined teachings of Moonka, King, and Amaudruz. Final Act. 12–17. In particular, the Examiner relies on King to teach, *inter alia*, assigning a unique identifier associated with the user and the user's use of the selected one or more unaffiliated data source. Final Act. 14 (citing King, col. 4, l. 50–col. 5, l. 50). Additionally, the Examiner finds Amaudruz teaches, *inter alia*, a dynamically changing identifier associated with the user changes over time for each of the unaffiliated data sources and tracking previous (i.e., past) identifiers. Final Act. 16 (citing Amaudruz ¶¶ 42–48).

We conclude Appellants mischaracterize the claim, asserting the claim protects the user's identity "by scrambling data . . . and then providing a system to re-assemble the data." Br. 25. This is not recited in the claims. *See Self*, 671 F.2d at 1348. Appellants also assert the unique identifiers are not only associated with the user, but are also purpose-limited, and limited per transaction. Br. 27. Appellants argue the identifiers of Amaudruz are "not the appropriate kind to implement the dynamic anonymity features of

the claimed invention" because the identifiers of Amaudruz "will generally bear a close relationship to each other." Br. 26–27. Therefore, Appellants posit multiple parties holding slightly different keys could collaborate to relate the keys to each other to yield a higher-access key. Br. 27.

When construing claim terminology during prosecution before the Office, claims are to be given their broadest reasonable interpretation consistent with the Specification, reading claim language in light of the Specification as it would be interpreted by one of ordinary skill in the art. *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). We are mindful, however, that limitations are not to be read into the claims from the Specification. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

Here, the plain language of the claim recites the dynamically changing identifier associated with the user is unique. There are no additional limitations as to the level of uniqueness of the identifier. Additionally, there is no limitation that the unique aspect of the identifier extends to a purpose or transaction level. *See* Ans. 25. Accordingly, we are unpersuaded of Examiner error.

Appellants also argue the Examiner erred in finding the prior art teaches or suggests "controls for setting one or more of a plurality of levels of disclosure of the dynamically changing unique identifiers associated with the user with the release for each of the one or more third parties." Br. 28–29. In particular, Appellants contend because King does not teach the use of dynamically changing unique identifiers, it cannot teach the disputed limitation. Br. 28. Additionally, Appellants again assert Amaudruz's identifiers differ from the claimed dynamically changing unique identifiers

and that Amaudruz "changes identifiers for an entirely different purpose."
Br. 28–29.

As an initial matter, "[a]n intended use or purpose usually will not limit the scope of the claim because such statements usually do no more than define a context in which the invention operates." *Boehringer Ingelheim Vetmedica, Inc. v. Schering-Plough Corp.*, 320 F.3d 1339, 1345 (Fed. Cir. 2003). Additionally, non-obviousness cannot be established by attacking references individually where, as here, the ground of unpatentability is based upon the teachings of a combination of references. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Rather, the test for obviousness is whether the combination of references, taken as a whole, would have suggested the patentee's invention to a person having ordinary skill in the art. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

We are unpersuaded of Examiner error because the Examiner relies on the combined teachings of Moonka, King, and Amaudruz to teach the disputed limitation and Appellants' arguments are not responsive to the Examiner's rejection. *See* Final Act. 12–17; Ans. 26–27. In particular, the Examiner relies on Moonka to teach a control interface for reviewing, managing and controlling the release of personal information and King to teach associating different levels of personal information with different tokens (i.e., identifiers). Ans. 26 (citing Moonka ¶¶ 38, 41, 45, Fig. 3; King, col. 7, ll. 25–65).

Further, we agree with the Examiner's findings. As shown in Figure 3 of Moonka and the accompanying text, Moonka teaches providing a user interface "for displaying user list information and providing user control of user-related information." Moonka ¶ 38. Additionally, King teaches

various levels of disclosure of user information as "different levels of granularity." King, col. 7, ll. 30–45. Thus, we agree that the combined teachings of Moonka, King, and Amaudruz teach or reasonably suggest controls for setting one or more of a plurality of levels of disclosure of the dynamically changing unique identifiers associated with the user with the release for each of the one or more third parties.

Appellants also argue the Examiner erred in finding the prior art teaches tracking past and current dynamically changing unique identifiers. Br. 29–31. Appellants acknowledge "tracking/logging techniques in general are known," but contend Amaudruz "is not concerned with tracking the full history of dynamically changing identifiers" and instead tracks past identifiers using a percentage accuracy threshold. Br. 30–31 (emphasis omitted).

As an initial matter, we note the claim language does not specify the manner in which past and current identifiers are tracked. In other words, the claims do not preclude using a percentage accuracy threshold in tracking past identifiers. Additionally, the claim language does not specifically recite tracking the "full history" of the identifiers. Thus, to the extent Appellants are arguing limitations not present in the claims, we are unpersuaded of Examiner error. *See Self*, 671 F.2d at 1348.

Additionally, we agree with the Examiner that it would have been obvious to apply Moonka's teaching of tracking database changes to the track-able identifiers of King and Amaudruz. Ans. 28. An obviousness analysis "need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ."

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KSR Int'l Co. v. Teleflex Inc., 550 U.S. 398, 418 (2007). "A person of ordinary skill is also a person of ordinary creativity, not an automaton." *KSR*, 550 U.S. at 421.

Appellants also argue the prior art cannot be combined to produce the surprising and unpredictable result of enabling the full use (and, therefore, the full value) of user data by transforming the data in ways which make it less useful for "data mining" and "big data" parties. Br. 34–37. As discussed above, we disagree with Appellants that there is a "transformation" of data. Accordingly, we are unpersuaded of Examiner error.

Notwithstanding what the teachings of the prior art would have suggested to an ordinarily-skilled artisan at the time of the invention, the totality of the evidence submitted, including objective evidence of nonobviousness, may lead to a conclusion that the claimed invention would not have been obvious to one with ordinary skill in the art. *In re Piasecki*, 745 F.2d 1468, 1471–72 (Fed. Cir. 1984). Objective evidence of nonobviousness may include solving a long-felt but unsolved need, failure of others, unexpected results, commercial success, copying, licensing, industry praise, and industry skepticism. *Graham v. Deere*, 383 U.S. 1, 17 (1966); *Transocean Offshore Deepwater Drilling, Inc. v. Maersk Drilling USA, Inc.*, 699 F.3d 1340, 1347, 1349–55 (Fed. Cir. 2012).

Here, Appellants contend the claimed system satisfies a long-felt, unmet need to improve privacy by providing user control over revealing user information to third parties. Br. 37–39. Appellants identify a Pew Research

Internet Project[3] and documents identified in their Information Disclosure Statement as purported support. Br. 38.

To accord substantial weight to objective evidence requires the finding of a nexus between the evidence and the merits of the claimed invention. *In re GPAC Inc.*, 57 F.3d 1573, 1580 (Fed. Cir. 1995). The burden of showing that there is a nexus lies with the applicant. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392 (Fed. Cir. 1988); *see also In re Paulsen*, 30 F.3d 1475, 1482 (Fed. Cir. 1994).

Here, Appellants have not alleged a nexus between the proffered objective evidence and the claimed invention, let alone sufficiently demonstrated such a nexus. As the Examiner explains, Appellants have not sufficiently shown that providing user control over revealing user identity information was a persistent problem. Ans. 30. Although the Pew Privacy Report may suggest users may want "to *better control* their identities and exercise *more choice* about who knows what," there is no indication as to how long this perceived problem has been recognized or what the level of control over one's user identity information was (in other words, the Report indicates a desire for better control and more choice—suggesting, at least, some level of control and choice already existed). Br. 38 (emphasis altered).

Accordingly, as mentioned above, failure to establish a nexus results in attribution of very little weight to the objective evidence. Further, assuming *arguendo* a nexus were present, as discussed *infra*, we find the objective evidence does not outweigh the combined teachings of Moonka, King, and Amaudruz and the Examiner's conclusion of obviousness.

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[3] Available at http://www.pewinternet.org/2014/11/12/public-privacy-perceptions/.

For the reasons discussed *supra*, we are unpersuaded of Examiner error. Accordingly, we sustain the Examiner's rejection of independent claim 1. Additionally, we sustain the Examiner's rejections of claims 2–13, which depend therefrom and were not argued separately.

Appellants advance similar arguments of patentability regarding independent claims 14 and 18 as were presented with respect to independent claim 1. *See* Br. 31–34. For similar reasons, these arguments are not persuasive of Examiner error. Accordingly, we sustain the Examiner's rejection of independent claims 14 and 18. Additionally, we sustain the Examiner's rejection of claims 15–17, 19, and 20, which depend therefrom and were not argued separately.

DECISION

We affirm the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 101.

We affirm the Examiner's decision rejecting claims 1–20 under 35 U.S.C. § 103(a).

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED